IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1892 of 2001
to
FIRST APPEAL No 1902 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

STATE OF GUJARAT
Versus
KALYANBHAI VITHALBHAI & OTHERS

Appearance:
MR MUKESH PATEL AGP for Appellants
MR NITIN M AMIN for Respondent - Claimants

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 04/05/2001

C.A.V. JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

1. This group of 11 First Appeals under Section 54 of the Land Acquisition Act, 1892 (`the Act') read with

Section 96 of the Code of Civil Procedure, 1908 is preferred against the common judgment and order dated 28.12.1999 passed by the learned 2nd Extra Assistant Judge and Special Judge (LAR), Ahmedbad (Rural) in Land Acquisition Case No.2509/96 (main) and other cognate cases.

2. The lands in question were acquired from Village Vejalaka, Taluka Dhandhuka, District Ahmedabad for the purpose of construction of Narmada Project-Limbdi Branch Canal. The notificaiton under Section 4 of the Act was published in the Gazette on 12.10.1992 and the award of the Land Acquisition Officer was passed on 18.12.1995. Upon a reference under Section 18, the compensation was determined at the total sum of Rs.28/- per sq. mtr. by the impugned judgment.

3. There is no dispute about the fact that the village Vejalaka of which the lands in question were acquired is in the western block adjoining the limits of Bhavnagar, Botad, Vadvan and it is near the villages of Ranpur, Darapipla, Kinara, Sundariyana, Botavna etc. The lands of these villages were also acquired for the same purpose of the Branch Canal by issuing notifications under Section 4 around the same period. Pursuant to such cases of lands acquired from the nearby villages for the same purpose, awards were made and judgments fixing compensation @ Rs.28/- per sq. mtr. have been confirmed by this Court in appeal.

4. It is in evidence on record that three crops were being taken from the lands in question and that irrigation facilities were also available so as to yield net income of Rs.7,000/- to Rs.8,000/- per bigha per year. A member of the Panchayat of Dhandhuka Taluka, who was examined on behalf of the claimants at Exh.30, has stated in his deposition that the outskirts of other nearby villages, i.e. Saranpur, Khambhada, Kundar, Vahiya, Ranpur, Golwata, Rojid, Sundariyana, Kinara etc., were adjoining to and within 5 kms. of each other. In the oral evidence on behalf of the acquiring bodies, i.e. the appellants herein, at Exh.47, it was stated that village Vejalaka was 33 kms. away from the taluka place and 123 kms. from the district place. The earlier judgments in respect of the lands acquired from the nearby villages mentioned hereinabove were produced before the Court, and relying upon the same and considering the fact that the lands of village Vejalaka were similar in nature, potentiality and fertility, compensation @ Rs.28/- per sq. mtr. was fixed in the impugned judgment.

5. As seen earlier, the rate of Rs.28/- in case of lands acquired from the adjoining or nearby villages by notifications under Section 4 issued around the same period has been confirmed by the judgments of this Court in First Appeals No.1262 to 1289 of 2001, 1638 to 1657 of 2001 and 1676 to 1694 of 2001. The learned Assistant Government Pleader reiterated the submission that village Vejalaka is far from taluka and district places and the rates awarded and confirmed in the cases of lands of nearby villages ought not to be applied in these cases. We find no substance in this argument in view of the evidence of nearness of the villages and similarity of the acquired lands in terms of fertility and potentiality. The learned Assistant Government Pleader also invited our attention to the denial of 5% Government Share from the compensation in case of new tenure lands. Mr.Nitin Amin, learned advocate of the respondent-claimants fairly conceded to modification of the impugned judgment to the extent that 5% deduction in case of new tenure lands may be allowed.

6. In the facts and circumstances as above, we do not find any reason to reduce the rate of compensation and no case is made out to interfere with the impugned judgment except to the extent that 5% Government Share shall have to be deducted from the compensation in cases of new tenure lands in accordance with the provisions of Section 11-A of the Act as amended by the State of Gujarat. Accordingly, these appeals are partly allowed. The impugned judgment and order shall stand modified to the extent that in cases in which the land in question is new tenure land, 5% Government Share shall be deducted from the compensation and the rights of the parties shall be governed in light of the modification and decree shall be drawn accordingly. In the facts and circumstances, there shall be no order as to costs in these appeals.

7. It is expected that the due amount of compensation with the modification as above shall be paid to the respondent-claimants within a period of three months from the date of service of a certified copy of this order upon the authorities concerned.

Sd/-

(M.R.Calla, J.)

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)